



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 15 दिसम्बर, 1984/24 अग्रहायण, 1906

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-2, the 3rd December, 1984

No. 3-20/84-ELN.—The Election Commission of India's notification No. 82/HP-LA/1/84 (Bye), dated 17th November, 1984 corresponding to 26th Kartika, 1906 (Saka) containing the judgment, dated the 21st September, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 1 of 1984, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New-Delhi.

Dated 17th November, 1984
Kartika 26, 1906 (Saka)

NOTIFICATION

No. 82/HP-LA/1/84 (Bye).—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the judgment dated the 21st September, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 1 of 1984.

भारत निर्वाचन आयोग

अशोक मार्ग,
नई दिल्ली-110001.
17 नवम्बर, 1984

तारीख—
कार्तिक 26, 1906 (शक)

अधिसूचना

संख्या 82/हि० प्र०-वि० स०/1/84 (उप).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1984 की निर्वाचन अर्जी संख्या 1 में शिमला स्थित हिमाचल प्रदेश के उच्च-न्यायालय के तारीख 21-9-1984 का निर्णय एतद्वारा प्रकाशित करता है।

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 1 of 1984

Date of Dec.—September 21, 1984

Shri Verinder Kumar

vs.

Shri Yog Raj and Others.

Hon'ble Mr. Justice T. R. HANDA, J.

Whether approved for reporting.....Yes.

For the Petr. ... S/Shri K.S. Patyal and S.S. Mittal, Advocate.

For the Resptd. ... Shri Inder Singh, Advocate for respondent No. 1.

T. R. HANDA, J.

Bye-election to fill in the vacancy occurring in the Himachal Pradesh Legislative Assembly from 39-Pragpur (Reserve) Constituency was held on 20th May, 1984. The present petitioner Shri Verinder Kumar and respondent No. 1 Shri Yog Raj were the main contenders for this

seat at the bye-election. The other three persons who filed their nomination papers to contest this seat were S/Shri Hoshiar Singh (Original Respondent No.2), Roshan Lal (Respondent No. 3) and Kanshi Ram (Respondent No. 4). Out of them Kanshi Ram respondent No. 4, had withdrawn from the contest leaving behind the petitioner, respondent No. 1, and S/Shri Hoshiar Singh and Roshan Lal only in the field.

The result of the bye-election was declared on 21-5-1984. Shri Yog Raj, respondent No. 1 polled 13,315 votes as against 11,650 votes polled by the petitioner. The other two candidates in between themselves polled only 239 votes. Respondent No. 1 thus having polled the maximum number of votes, was declared successful.

In this petition filed under section 80 and 81 read with section 100 of the Representation of People Act, 1951, hereinafter called as "the Act", the petitioner has called in question the validity of the election of respondent No. 1 and has prayed that the same be declared void. The petitioner seeks to challenge the election of respondent No. 1 on the sole ground that this respondent, his election agent and other agents with his consent had indulged in to various activities which constitute corrupt practices. The petition does not contain a concise statements of material facts on which the petitioner relies though particulars of the alleged corrupt practices do find mention in paragraph-4 of the petition.

The returned candidate Shri Yog Raj respondent No. 1 alone has come forward to contest this petition. In the reply filed on his behalf, a number of preliminary objections have been raised. According to respondent No. 1 these preliminary objections are fatal to the petition. A prayer has accordingly been made that such preliminary objection should be disposed of in the first instance. The preliminary objections raised on behalf of respondent No. 1 would be apparant from the following preliminary issues framed by this court on the basis of those objections:—

1. Whether the copy of the election petition furnished by the petitioner to the respondent has not been attested to be true copy as required under sec. 81(3) of the Representation of People Act, 1951, if so, its effect ?
2. Whether Annexures to the election petition have not been signed, attested and verified in accordance with law. If so, its effect ?
3. Whether the petition has not been verified in accordance with law. If so, to what effect ?
4. Whether the affidavit filed in support of the petition is not in the prescribed form and not in accordance with the rules. If so, to what effect ?
5. Whether there is no concise statement of the material facts in support of the corrupt practices alleged in paragraphs 4 and 5 of the petition. If so, to what effect ?
6. Whether the allegations made in the aforesaid paras 4 and 5 do not amount to corrupt practices within the meaning of Sec. 123 of the Representation of People Act, 1951 ?
7. Whether the full particulars of the corrupt practices mentioned in paras 4 and 5 have not been given as required under section 83(1) (b) of the Act, 1951. If so, to what effect ?

At the start of the arguments, Shri Inder Singh, learned counsel for the contesting respondent conceded that the election petition is duly verified in accordance with law and as such he did not press his objection forming subject matter of preliminary issue No. 3. The counsel for the parties further agreed that arguments on issues No. 6 and 7 need not be addressed for the present, and that decision on these issues be deferred. The learned counsel for the parties accordingly confined their arguments only to preliminary issues No. 1, 2, 4 and 5 as stated above.

Issue No. 1 and 2:

Inasmuch as the main allegations underlying these two issues relate to non-compliance of the requirements of section 81 and 86 of the Act. It is considered desirable at the out-set to review the law on the subject as laid down by the Supreme Court from time to time, that is, the law regarding effect of non-compliance of the provisions of Section 81 of the Act.

In order to appreciate the various Supreme Court cases having bearing on the subject, it would be convenient to extract the relevant provisions of Sections 80, 81 and 86 of the Act as also Article 329 of the Constitution.

- "80. *Election petitions*.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.
81. (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.
86. *Trial of election petition*.—(1) The High Court shall dismiss an election petition, which does not comply with the provisions of section 81 or section 82 or section 117.
329. Notwithstanding anything in this Constitution but subject to the provisions of article 329 (A)—

- (a);
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

The question with respect to the nature of the right to vote or stand as a candidate for election as also the nature of the jurisdiction conferred upon the Courts or tribunals to exercise and determine election disputes was first examined by the Supreme Court as early as 1952 in the case of *N.P. Ponnuswami vs. The Returning Officer, Namakkal Constituency*. After citing with approval a passage from the judgment of Lord Cairns, in the case of *Theberge vs. Laudry*, (1976) 2 A.C. 102, the learned Judges of the Supreme Court annunciated the following two principles:

- "1. The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitation imposed by it.
2. Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction that special jurisdiction should be exercised in accordance with the law which creates it."

This subject again came up for consideration before the Supreme Court in the case of *Jagan Nath vs. Jaswant Singh and Ors.* when the Court observed:

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that

1. A.I.R. 1952 S.C. 64.
2. A. I. R. 1954 S.C. 210.

it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. None of these propositions, however, has any application if the special law itself confers authority on a Tribunal to proceed with petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by fragrant breaches of that law or by corrupt practices. In case where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

In this case, the learned Judge while considering the consequences of non-compliance of Sec. 82 of the Act in the conspectus of section 81, 82 and 117 thereof. The Act prescribed no penal consequences for non-compliance of Section 83 whereas in case of non-compliance with the provisions of Section 81, 82 and 117 it enjoined upon the Election Commissioner to dismiss the election petition. The Hon'ble Judges of the Supreme Court, accordingly held that the non-compliance of Sec. 83 of the Act did not entail a compulsorily dismissal of an election petition while impliedly indicating that non-compliance of secs. 81, 82 and 117 did involve such consequences.

In the case reported as ³Rattan Anmol Singh vs. Ch. Atma Ram and Ors. the learned Judges had the occasion to deal with a case of absence of attestation on nomination paper subscribed by an illiterate person as required by Sec. 33 of the Act. The question arose whether for want of such attestation the Returning Officer was bound to reject the nomination paper under Sec. 36 (2) (d) of the Act. It was held that the defect was not of the technical nature but was of a substantial character and Sec. 36 being mandatory, the Returning Officer at the time of scrutiny could not permit rectification of the defect. The learned Judges went to the extent of saying that even if evidence had been led to satisfy the Returning Officer about the identity of the person subscribing to the nomination paper and thereby fulfilling the purpose of attestation, nevertheless, the position could not change and Section 36 would still have its compulsorily affect. To put in other words, what the learned Judges intended to impress upon was that equitable considerations of common law court administering common law, had no place in determining election matters under the special election law.

In the case of ⁴Babu Ram vs. Smt. Prasani and Others, the learned Judges of the Supreme Court while considering the scope of Sec. 36 of the Act laid down the following important dictum :

"Whenever the statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence. There is no doubt that the essential object of the scrutiny of nomination papers is that the Returning Officer should be satisfied that the candidate who is not an elector in the constituency in question, is in fact an elector of a different constituency. The satisfaction of the Returning Officer is thus the matter of substance in these proceedings; Section 33

3. A.I.R. 1954 S.C. 510.

4. A.I.R. 1959 S.C. 93.

(5) requires the candidates to supply the prescribed copy and Sec. 36 (2) (b) provides that on his failure to comply with the said requirement his nomination paper is liable to be rejected. In other words this is a case where the statute requires the candidates to produce the prescribed evidence and provides a penalty for his failure to do so. If the candidate fails to produce the relevant copy, the consequence prescribed by Sec. 36 (2) (b) must inevitably follow. Where the statute requires specific facts to be proved in a specific way and it also provides for the consequence of non-compliance with the said requirement, it would be difficult to resist the application of the penalty clause on the ground that such an application is based on a technical approach."

It would be also relevant to quote the following observation made by the Supreme Court in the case of *Ch. Subbarao vs. Member, Election Tribunal*⁵.

"An election petition was not to be equated to an action at law or in equity, but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to wave non-compliance."

The learned Judges further observed:—

"It cannot be urged that the jurisdiction of the election tribunal under section 90 (3) to dismiss an election petition which does not comply with the provisions of section 81 is attracted only if there is a defect in the petition itself and that a defect merely in the copy accompanying the petition would not be a case of a petition not complying with the provisions of Sec. 81 so as to require or even permit the Tribunal to dismiss the petition. When Sec. 81 (3) requires an election petition to be accompanied by the requisite number of copies it becomes a requirement for the presentation of the election petition to the commission and, therefore, a condition precedent for the proper presentation of the election petition. If that is the requirement of Sec. 81 no distinction can be drawn between the requirements of sub-section (1) and (2) and non-compliance with the provisions of section 81 (3)."

It may be noticed that in this particular case the question for consideration before the learned Judges was whether the copy accompanying the election petition was a true copy or not. The requisite number of copies were of course filed. The copies bore two signatures of the petitioner authenticating both the contents of the petition as also the verification but the petitioner had omitted to insert the words 'true copy' before and above his signature. It was contended that section 81 (3) of the Act had not been complied with. This contention was, however, negated by the Court as the copies were found to be true copies and omission to insert the words "true copy" not, in the opinion of the Court, matter as the section itself did not indicate the manner of authentication of a copy as a 'true copy'. That however, does not effect the views that section 86 of the Act is mandatory in nature and must be strictly complied with.

The nature of the right vested in an elector/candidate to challenge an election as also the jurisdiction vested in the High Court for the purpose of trial of an election petition was once again declared by the Supreme Court in the following terms in the case of *Charan Lal Sahu vs. Nandkishore Bhatt and Others* by observing :

5. A.I.R. 1964 S.C. 1027.

6. A.I.R. 1973 S.C. 2464.

"The right to challenge an election conferred by Article 329 (b) of the Constitution being a statutory right, the terms of that statute has to be complied with. If no discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs is conferred, it cannot be exercised under any general law or any principle of equity. There is no provision in the Act empowering the High Court to absolve the petitioner from making any security deposit or to reduce the amount required to be deposited under the Act."

This dictum in relation to security deposit will also apply to non-compliance of the requirement of mandatory provisions contained in Secs. 81 and 82 of the Act.

In the case of *Satya Narain vs. Dhua Ram and others*⁷, also the Supreme Court had the occasion to consider the scope of Section 81 (3) of the Act when it observed :

"It is true that Section 81 (3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by the Courts as to defeat the ends of justice. But if a law even though it may be procedural in character certain insist that an act must be done in a particular manner and further provides that certain consequences would follow if the act is not done in that manner, the Courts have no option but to enforce the law as it is."

The question whether the provisions of sections 81, 82 and 117 and 86 of the Act are mandatory and non-compliance if such provisions would entail the dismissal of the election petition was directly involved in the case of *Sharif-ud-din vs. Abdul Gani Lone*⁸ under the Jammu and Kashmir Representation of the People Act. The distinction between a mandatory and a directory provision was explained by their Lordships in the following terms :

"The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus :

The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question, whether it is mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify, the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified.

7. A.I.R. 1974 S.C. 1185.

8. A.I.R. 1980 S.C. 303.

The learned Judges then after considering the nature of the provisions found in sec. 89 of Jammu and Kashmir Representation of People Act, which corresponds to Sec. 81 of the Act, observed in para-20 of the judgment as under:—

“We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in section 94 of the Act.” (Corresponding to Section 86 of the Representation of People Act, 1951).

While interpreting the word ‘copies thereof’ found in section 81 (3) of the Act, the Supreme Court ruled in the case of *M. Karunanidhi vs. H. V. Handa and others*⁹ that when read in the context of Section 81 (2), the words, ‘copies thereof’ existing in section 81 (3) must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein.

The latest authority of the Supreme Court on the subject is found in case of *J. P. Goyal vs. Raj Narain and others*¹⁰. The pertinent observations made by this Court in the above case may be extracted :

“A perusal of Sections 81 (3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner disregards the mandate contained in Section 81 (3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under section 86. Hence, the mandate contained in Section 81 (3) cannot be equated with Section 537 of the Code of Criminal Procedure which makes certain omissions as a curable irregularity. No such concept can be imported into the election law because the object of the law is that the electoral process should not be set at naught and an elected candidate should not be thrown out unless the grounds mentioned in the Act are fully proved. An election dispute concerns the entire constituency and in Parliamentary democracy it is of paramount importance that duly elected representatives should be available to share the responsibility in the due discharge of their duties. That is why the law provides time bound disposal of election disputes and holds out a mandate for procedural compliance..... The consequences of the mandatory provisions of Section 81 (3) could not be got over by praying for an amendment of the election petition because that would defeat the very object and purpose of section 81 (3).”

On a consideration of the above cited authorities, the following propositions appear to emerge from the view which has been consistently expressed by the Supreme Court from time to time :

- (i) the right to challenge an election is not a civil or common law right. It is a creation of a statute or a special law;
- (ii) this right is, therefore, subject to all the limitations imposed by the law creating it ;
- (iii) an action brought to challenge an election is not an action at common law or a suit in equity it is a statutory proceedings unknown to the common law ;
- (iv) the Act is a special measure which vests an entirely new jurisdiction on the High Court. Such jurisdiction by virtue of its peculiar nature is to be exercised within

9. A.I.R. 1983 S.C. 558.

10. 1984 S. C. C. (Vol. 3), 340.

four corners of the Act and strictly in accordance with the law which operates to create it;

- (v) considerations which should weigh with the High Courts while dealing with an election petition are entirely different from those which ordinarily weigh to the Courts while dealing with an action at common law or a civil suit;
- (vi) ordinarily a procedural law should not be given that primacy by the courts as would defeat the ends of justice but where the law, though procedural in character, insists that an act must be done in a particular manner and also provides that certain penal consequences shall follow if the act is not done in the manner prescribed, the courts have no choice but to enforce the law as it is. A provision of this type is called mandatory and the courts have no jurisdiction to waive compliance thereof;
- (vii) wherever there is a non-compliance of a mandatory provision, it must entail the consequence provided in law and it is no defence in such a case that the non-compliance was inadvertent or that it did not cause any prejudice to the other party;
- (viii) non-compliance of Sec. 81(3) of the Act entails the penalty of dismissal of the election petition in terms of Sec. 86 (1) of the Act. This provision is, therefore, of mandatory character and its non-compliance must be visited with the penalty provided under the law.

Having stated the legal position, I would now advert to the facts. Ex. P. 1 is the copy of the election petition (inclusive of the Annexures) which was filed by the petitioner along with the election petition and which was actually served on respondent No. 1. This fact is admitted on either side as is obvious from the statement of counsel for the parties recorded in E.M.R. No. 3 of 1984. Now the contention of the learned counsel for the respondent is that the copy Ex. P. 1, does not answer the requirements of Sec. 81(3) of the Act and the filing of such a copy with the election petition would amount to non-compliance of the provisions of Sec. 81(3) of the Act on the part of the petitioner. In support of this contention, the learned counsel has pointed out the following discrepancies/informities in the copy Ex. P. 1 :—

- (i) The various pages of copy Ex. P. 1 contain the simple endorsement 'attested to be true copy' whereas the requirement of Sec. 81(3) is that every copy shall be attested by the petitioner under his own signatures to be a true copy of the petition. Of course, the endorsement appearing on the various pages of the copy does bear the signature of the petitioner but such an endorsement does not reflect if it is a true copy of the petition.
- (ii) The endorsement 'attested to be true copy' under the signatures of the petitioner which appears on various pages of the copy Ex. P. 1, however, does not appear on page 10 of the copy. The simple endorsement found on this page reads 'true copy'. The words 'attested to be' appearing on the other pages are missing on page 10.
- (iii) The original affidavit of the petitioner filed in support of the allegations and particulars of the corrupt practices bears endorsements suggesting that the same was attested by Madhu Khanduja, Qath Commissioner, before whom it was affirmed. The copy of this affidavit found with Ex. P. 1, however, bears no such endorsement nor does it indicate if the affidavit was at all attested before a competent authority.
- (iv) All the Annexures filed with the original petition contain the endorsement 'this annexure is verified to be true to the best of my knowledge at Shimla on this fourth day of July, 1984'. One of the Annexures, namely, Annexure-A bears the following endorsement:—
"Verification"

"I Verinder Kumar, petitioner, to the petition do hereby verify that this annexure is true to my knowledge. Verified at Shimla on 4-7-1984.

Sd/-
Verinder Kumar,
Petitioner".

The copies of the Annexures as supplied to the respondent along with the copy Ex.P-1, however, contain no such endorsement of verification. On the other hand the simple endorsement which appears on such copies read :

"Verified to be true on 4-7-1984.

Sd/-
Verinder Kumar".

Whereas all other copies of annexures attached with Ex. P-1 bear the endorsement 'Attested to be true copy' under the signatures of the petitioner, no such endorsement finds mention in the copy of Annexure D/1 which bears the following endorsement :

"Attested to be true translation".

That the various discrepancies as pointed out by the learned counsel for the respondent exist in the copy of the petition Ex. P-A, is a matter on which there can be no two opinions. The same can be verified by a visual inspection of the copy Ex.P-1 and the original petition. The conclusions thus are irresistible that :

- (i) the copy Ex. P-1 (inclusive of its annexures) which was filed by the petitioner along with the petition is not the true copy of the petition ; and
- (ii) the copy Ex. P-1 does not bear the requisite attestation within the contemplation of Sec. 81(3) of the Act under the signatures of the petitioner.

Looked from this angle, the petitioner has certainly failed to comply with the provisions of Sec. 81(3) of the Act. This non-compliance on his part must entail the consequence as enjoined in Sec. 86(1) of the Act and the petition deserves dismissal on this short ground.

Both these issues are accordingly found in favour of the respondent No. 1 and against the petitioner.

Issue No. 4 :

Proviso to clause (c) of sub-section (i) of Sec. 83 requires that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. It is not disputed that such an affidavit has actually been filed by the petitioner along with the petition. The contention raised on behalf of the respondent, however, is that this affidavit is not in the prescribed form and not in accordance with the Rules. The contention is based on the plea that the affidavit does not disclose source of information in respect of the various allegations of corrupt practices alleged by the petitioner. I find no substance in this connection. Section 87 of the Act lays down the procedure to be followed by the High Court while conducting trial of an election petition. This section provides:

"Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings".

Section 169 of the Act empower the Central Government after consulting the Election Commission to make rules for carrying out the purposes of the Act. In exercise of that power, the Central Government has framed the Rules called "Conduct of Election Rules, 1961". Rule 94-A of these Rules states that the affidavit referred to in the proviso to sub-section (1) of Sec. 83 shall be sworn before a Magistrate of the first class or a Notary or a Commissioner of Oaths and shall be in form-25. The affidavit furnished by the petitioner is thus in accordance with provision of the Act and the Rules framed thereunder and is perfectly in order. The objection raised on behalf of the respondent was that the affidavit does not disclose the source of information of the petitioner on which the various allegations of corrupt practices have been made. I find that there is no requirement of law to disclose the source of information and in case the petitioner has not done so, he cannot be said to have violated any law or rule. This issue is accordingly found against the respondent.

Issue No. 5:

It is an admitted position that the election petition contains no concise statement of the material facts on which the petitioner relies. It only contains full particulars of the corrupt practices alleged by the petitioner. The question which, therefore, falls for consideration under this issue pertains to the legal effect of the omission on the part of the petitioner to give in the petition a concise statement of the material facts on which he relies.

Now as observed earlier, the right to challenge an election is a statutory right. It finds its origin in Article 329 (b) of the Constitution. This provision enjoins that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. An election, therefore, can be challenged only in accordance with the provisions of the Act by filing an election petition as contemplated by Section 83 which lays down what an election petition must contain. Clause (a) of sub-section (1) of section 83 enjoins that an election petition shall contain a concise statement of the material facts on which the petitioner relies. When read in the context of Article 329 (b) of the Constitution, this provision must be held as mandatory as no election can be called in question except by presenting a petition in the manner provided in the Act. The question that Section 83 is mandatory or not had earlier come up for consideration before the Supreme Court in the case of *Samant N. Balakrishna etc. vs. George Fernandez and others etc.*¹¹ where the Court speaking through the Chief Justice Hidayatullah observed:

"Section 33 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct."

It is thus obvious that an election petition must contain not only the full particulars of the corrupt practices alleged in the petition but also a concise statement of material facts on which the peti-

tioner relies on both these requirements are independent of each other. A petition which does not contain either of these would not be a proper election petition within the contemplation of Section 83 of the Act on the basis of which an election can be successfully challenged. The omission on the part of the petitioner to give a concise statement of material fact on which he relies in the petition is, therefore, a clear violation of the mandatory provisions of Sec. 83(1) of the Act and is, therefore, fatal to the petition. This issue is also decided in favour of respondent No. 1 and against the petitioner.

As a result of my findings on issues No. 1, 2 and 5 above, I hold that the petition having not been presented in the manner provided in the Act, the same cannot successfully challenge the election of respondent No. 1 and hence must fail. I accordingly dismiss this petition with costs. Keeping in view, however, the fact that the petition is being dismissed on preliminary issues, I assess the costs at Rs. 250/- only which shall be payable by the petitioner to respondent No. 1 who alone has come forward to contest this petition.

September 21, 1984.

Sd/-
T. R. HANDA,
Judge.

By order,
DHARAM VIR,
Under Secretary,
Election Commission of India.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 15 दिसम्बर, 1984/24 अग्रहायण, 1906

हिमाचल प्रदेश सरकार

PERSONNEL (A-I) DEPARTMENT

NOTIFICATION

Shimla-2, the 28th November, 1984

No.Per. (A-I)-A(1)-1/84.—The Governor, Himachal Pradesh is pleased to order that Shri K. C. Sood, Joint Secretary (Law)—Litigation Cell to the Government of Himachal Pradesh, will also function as Director of Prosecution & Legal Remembrancer to the Government of Himachal Pradesh, in addition to his own duties, till further orders.

By order,
K. C. PANDEYA,
Chief Secretary.